

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 95-60313
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

WOODROW BEAMER,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Northern District of Mississippi
USDC No. 3:94CV043D
- - - - -

June 25, 1996

Before HIGGINBOTHAM, BARKSDALE, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Woodrow Beamer appeals from an order dismissing his motion pursuant to 28 U.S.C. § 2255. He argues that his convictions for using and carrying a firearm during a drug trafficking offense and possession with intent to distribute cocaine base violated the Double Jeopardy Clause. We AFFIRM the district court's dismissal of this claim for essentially the same reasons set

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

forth by the district court. United States v. Beamer, No. 3:94CV043D (N.D. Miss. March 9, 1995).

We do not consider Beamer's new claim on appeal that the evidence was insufficient to show an active employment of the firearm. See United States v. Calverley, 37 F.3d 160, 162-64 (5th Cir. 1994) (en banc) (citing United States v. Olano, 507 U.S. 725, 731-37 (1993)), cert. denied, 115 S. Ct. 1266 (1995). Further, Beamer's claim that his sentence constituted racial discrimination is deemed abandoned. See Brinkmann v. Dallas County Deputy Sheriff Abner, 813 F.2d 744, 748 (5th Cir. 1987).

The appeal is without arguable merit and thus frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Because the appeal is frivolous, it is DISMISSED. 5th Cir. R. 42.2.

APPEAL DISMISSED.